

Basic Understanding of Legal Deeds and Documents

Learning Objectives

After reading this chapter, you will be able to understand

- ◆ Understand the meaning of deeds and documents
- ◆ Know how to draft model deeds and documents
- ◆ Know how to prepare the annual report of a company

Introduction

Legal drafting is of great importance to a person for entering into various types of agreements with different parties and in executing various types of documents in favour of the other.

This Legal drafting is a technical writing used by lawyers, judges, legislators and others in law to express legal analysis and legal rights, privileges, functions, status and duties.

Drafting is of importance for the three reasons:

- (i) For obtaining legal consultations
- (ii) For carrying out documentation
- (iii) For interpretation of the documents

Legal Drafting have been catagorised into three forms-

Document: Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form. For example, Section 3 of the Indian Evidence Act, 1872 states that 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. Section 3(18) of the General Clauses Act, 1897 states that the term 'document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more by than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter. The principles governing interpretation of documents are not different from those of statutes. The

intention, in the first place, must be gathered from the document itself. If the words are express and clear, effect must be given to them

From above it can be concluded that Document is something on which things are written, printed or inscribed, and which gives information, any written thing capable of being evidence. Any legible information which is set down in a lasting form would be a document. Document includes electronic document.

Instrument: In common parlance, 'instrument' means a formal legal document, which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded. An instrument has to be interpreted with reference to the intention of the executants. Intention has to be gathered as expressed by words used in their ordinary natural sense as the words are the sole guide to the intention. For *e.g.*, a deed of conveyance, stock-certificates, bonds, coupons, notes, cheques, deeds, will, award, record, charter, etc

Deed: The Legal Glossary defined 'deed' instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition. Simply stated deeds are instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and deeds.

It generally consists of the following parts; the premise, premises, the habendum, the tenendum, the reddendum, the conditions and the covenants.

In ascertaining the legal effect of a transaction the Court seeks in the first instance to determine the intention of the parties and when ambiguous expressions are used, the court may normally adopt that determination which upholds the deed, if the parties thereto have acted on the assumption of its validity. The deed has to be read as a whole and, if possible, effect should be given to all parts thereof.

Components of the deeds and documents

A deed is divided into different paragraphs. Each paragraph deals with relevant and related information in simple and intelligible language. If a particular part is not applicable in a particular case that part is omitted from the document. The important components in general are as following:

- Heading of the document
- Date and place of execution of the document
- Names & description of Parties
- Recitals
- Terms and condition

- Special rules
- Jurisdiction
- Signature of the parties
- Signature of the witnesses

The Deed must be executed on a stamp paper of prescribed value.

19.1 Partnership Deed

Partnership deed is a written instrument laying down the constitution of the Partnership firm as per the law of partnership in India, which is governed by the Indian Partnership Act, 1932. The Act lays down the provision relating to the right, duties and liabilities of a partners, relations with the partners and with the third parties, registration and dissolution of the partnership firm.

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all (Section 4). It, therefore, follows that a partnership consists of three essential elements:

- It must be a result of an agreement between two or more persons.
- The agreement must be to share the profits of the business.
- The business must be carried on by all or any of them acting for all.

All these essentials must coexist before a partnership can come into existence.

A partnership firm may be constituted either by oral agreement or a written agreement. A written agreement of partnership or partnership deed is preferred as it minimizes the challenges of disputes and ambiguities in future. The model form of partnership is given below:

PARTNERSHIP DEED

This AGREEMENT OF PARTNERSHIP is made in city ofon day of20.....betweenof(hereinafter called the FIRST PARTY) and of (hereinafter called the SECOND PARTY) of(hereinafter called the third party) on the terms and conditions set forth herein;

The parties aforementioned mutually agree:

- That the name of the partnership shall be
- The partnership shall commence on theday of20.....for the.....purpose of carrying on the business ofand shall continue foryears unless determined earlier by notice in writing by any party delivered to the other parties.
- The business of the partnership shall be carried on atand at such other places as may be mutually agreed upon.

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4. The capital of the partnership shall be ₹ which shall be contributed in equal shares by the parties.
5. The share of the parties in profits and losses shall be equal.
6. Proper and regular account of the affairs and transactions of the partnership shall be maintained and kept at the principal place of business of the partnership. Six monthly balance-sheet and profits and loss account shall be prepared under the supervision of all the parties and shall be signed by each party, who shall be bound thereby except for error discovered and rectified within three months thereof.
7. No partner shall carry on any other business which may be allied or similar to the business of the partnership.
8. Death of a partner shall not operate as dissolution of the partnership. The legal representative or heir of the deceased partner shall not be entitled to interfere in the management of the affairs of the partnership but he shall be entitled to inspect the account books and the vouchers in support thereof for the purpose of ascertaining his share therein and the profits accruing due thereon. He shall not, however, be liable for any losses incurred after the demise of the partner unless he is taken as a partner in the place of the deceased partner immediately on such demise.
9. Any dispute arising out of his partnership or as to interpretation, operation or enforcement of terms of this partnership between the parties or their legal representatives shall be referred for adjudication to the arbitration of the President of the Bar Association at or his nominee whose decision shall be final and binding on all parties and their legal representatives.

In witness whereof the parties of aforementioned have signed this deed of partnership.

WITNESS

1.
2.
3.

Signature

- First Party
- Second Party
- Third Party

19.2 Power of Attorney

The law relating to power of attorney falls within the law of agency. A power of attorney is a written instrument empowering a specified person or persons to act for and in the name of person executing it. The instruments of power of attorney are classified into the following two categories:

Specific Power of Attorney: A specific power of attorney is given for a particular specific act, for instance, for appearance before Tax authorities or before Registrar of Companies for presenting documents for incorporation of a company or before a Sub-Registrar for registration of documents etc.

General Power of Attorney

- (a) Covering all the acts relating to the execution of the deed. Presenting the same for registration, admitting execution thereof etc. can be executed and attested before a Notary Public or a First Class Magistrate

- (b) Such a General Power of Attorney can be registered also.
- (c) When an irrevocable power of attorney, having the element of agency coupled with interest covered under section 202 of the Indian Contract Act, 1872, is registered with the registration authorities, the stamp duty payable is as that of a sale/conveyance.
- (d) Such a registered General Power of Attorney as mentioned in (c) above is not entered in Book -I and there is no public notice regarding the same. The same will not be reflected in the encumbrance certificate also.

Formats

Power of Attorney to appear before Income-Tax Authorities

I, -----, s/o -----, r/o -----, and partner of the firm M/s -----, with its registered office at -----, do hereby appoint Mr. -----, s/o -----, r/o ----- as attorney of the firm above named and authorise him for the purpose hereinafter mentioned:

1. That the said attorney shall appoint an Advocate of his choice and hand him over the judgment of tribunal of Income-Tax and instruct him to file the appeal against the order, for the Assessment Year
2. That the said attorney shall execute Vakalatnama to the Advocate appointed by him and shall sign all the related papers under the supervision of the Advocate.
3. That specimen signature of the said attorney is given on the left side of this deed.
4. The said attorney shall generally do all other lawful acts necessary for the conduct of the said case.

I hereby declare that the acts done by the said attorney in connection with the work give to him shall be deemed to have been done by me and shall be binding on the firm and its partners.

IN WITNESS WHEREOF I have signed this power of attorney in the presence of the following witnesses :

Signature
(Holder of Power of Attorney)

WITNESSES :

- 1.....
- 2.....

POWER OF ATTORNEY TO EXECUTE A SALE DEED

BY THIS POWER OF ATTORNEY, Iagedyears, son of, resident of Hereby appointaged years,

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son ofresident of, as my Attorney to act in my name and on my behalf and do or execute all or any of the acts or things hereinafter mentioned, that is to say:

1. To receive from, aged about.....years, son of, resident ofthe Purchaser the sum of Rupees (₹) only being the price agreed to be paid to me by the said Purchaser for the purchase of (give full description of property) under an agreement datedand to give proper receipt and discharge for the same.
2. To execute a sale-deed of the said property.
3. To present the said sale-deed for registration before the proper registration authority, to admit the execution thereof, to do all acts, deeds and things which may be necessary for registering the said sale-deed.
4. To execute or to do all acts, things or deeds or assurance for the completion of the sale of the said property.
5. To deliver possession of the said property to the Purchaser or his nominee.

AND I DO HEREBY AGREE to ratify all acts, things, deeds or proceedings lawfully done by my said *Attorney* on my behalf and in my name by virtue of this power of attorney and the same shall be binding on me in full force or effect.

IN WITNESS WHEREOF I have executed this power atthisday of19.....

Witness:

.....

Executant

19.3 Lease Deed

A lease is defined under Section 105 of the Transfer of Property Act, 1882 as transfer of enjoyment of immovable property by one person called the lesser to another person called the lessee in consideration of a premium which means a price paid or promised or rent which may be periodical payment of money, share of crops or rendering of services. In order to constitute the valid lease, there must be a transfer of right to enjoyment of immovable property though delivery of possession of the property is not a condition precedent for operation of a lease.

The terms of lease including the period of lease, amount of rent etc. are contained in a leased agreement or deed duly executed and signed by both the lesser and lessee. The model forms of lease deeds are given below:

LEASE OF LAND FOR LIMITED PERIOD

THIS DEED OF LEASE of land made on.....day of.....between
....s/o.....r/o.....(hereinafter called the 'lessor') ands/o.....r/o.....
(hereinafter called the 'lessee')

Whereas both the lessor and the lessee agree to the following terms and conditions :

1. That the lessor agrees to lease out the land numbering located inin the District of.....to the lessee with effect from.....for a period of years on payment of monthly rent..... of ₹.....payable on the fifth day of each month in advance.
2. That the lessee agrees to take the aforesaid piece of land on lease. He shall pay the rent hereby reserved in the manner hereinbefore stated.
3. That the responsibility to pay all rates, taxes and charges which are payable or may so become at a future date in respect with the leased land, shall rest upon the lessor.
4. That the lessee shall deliver the peaceful vacant possession of the leased land to the lessor at the termination of the period of lease. Lessee intending to vacate the leased land at an early date, shall give notice of his intention to the lessor to vacate the leased land at the expiry of the period stated in the notice. Default in payment of rent for four consecutive months shall entitle the lessor to enter upon the said land and determine the lease.

IN WITNESS WHEREOF, the lessor and the lessee have signed this deed on the day and year above stated.

Witness.....

Lessor.....

Witness.....

Lessee.....

19.4 Affidavit

An affidavit is a written statement used mainly to support certain applications and in some circumstances as evidence in court proceedings. A person who makes the affidavit is called the Deponent and must swear or affirm that the contents are true before a person who has the authority to administer oaths in respects of the particular kind of affidavit. The model form of affidavit is given below:

I son of aged years,
residing at, hereby solemnly affirm
and declare on oath as under:

....."
....."
....."

Sworn on this..... day of.....

Date:

Signature:

Place:

19.5 Indemnity Bond

A contract of indemnity as defined under Section 124 of the Indian Contract Act, 1872 is a contract by which one party promises to safe the other from loss cost to him by the contract of

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the promissory himself or by the contract of any other person. A person who gives the indemnity is called indemnifier and a person for whom protection is given is called the indemnity holder. The model form of indemnity bond is given below:

Name of the Assessee:

P.A.N. No.....Assessment Year:

I..... son/ wife/ daughter of Resident of do hereby agree to indemnify the Government of India for any loss that may occur on giving credit for the Certified Photostat copies of the TDS Certificates//...../..... for a sum of ₹ being ... % of my share in the total TDS of ₹ of I further declare that the credit for consolidated TDS Certificate was not claimed in the hands of the Association of persons.

Date:

Signature:

Place:

19.6 Gift Deed

The law relating to gifts is provided for in the Transfer of Property Act, 1882 and the Indian Succession Act, 1925. Gift is defined as the transfer of certain movable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. A gift to be valid must be accepted by the donee during the life time of the donor. Registration of a gift often immovable property is must and that of movable property is optional. The model form of deed of gift is given below:

A Gift Deed requires compulsory attestation by witness. Section 123 of the Transfer of Property Act, 1882 spells out the requirement. Transfer how effected:

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

GIFT DEED

THIS DEED OF GIFT made on thisday ofBETWEEN.....aged about.....years, son of resident of(hereinafter called "the Donor") of the one part AND , aged about.....years, son of , resident of(hereinafter called "the Donee") of the other part:

WHEREAS the Donor is the absolute owner in possession of the house situated atmore specifically described in the Schedule hereto:

AND WHEREAS the Donor has no issue and the done is the nephew of the Donor and has been living with him since childhood.

AND WHEREAS the Donor out of natural love and affection for his said nephew, the Donee, is desirous of making a gift of the said house to the done:

NOW THEREFORE THIS DEED WITNESSES as follows:

1. That in consideration on natural love and affection of donor for the Donee, the donor hereby voluntarily transfers to the Donee free from all encumbrances whatsoever ALL the said house with ALL rights of easement, privileges appurtenant thereto TO HOLD the same unto the done absolutely for every.
2. That the Donor or his heirs shall have no interest in the said house hereafter.
3. That the Donee hereby accepts the said transfer made by the Donor.
4. That the value of the said house is Rupees Five lakhs only (₹ . 5,00,000/-).

IN WITNESS WHEREOF the parties hereto have signed this deed at in presence of the witnesses on the date and year first hereinabove written.

Donee

Donor

19.7 Company – Memorandum and Articles of Association

A company is incorporated by means of a Memorandum of Association and Articles of Association registered with the Registrar of Companies who will issue on registration a certificate of incorporation. Specimen of general format of memorandum and article of association is given below.

Format of Memorandum of Association

MEMRANDUM OF ASSOCIATION OF-----PRIVATE
LIMITED (Incorporated under the Companies Act, 2013)

1. Name of the Company:

The name of the company shall be.....

2. Registered Office:

Registered office of the company shall remain in the(Mention the state) and at present it is at the following address:

.....
.....

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3. Aims and Objects:

The aims and objects for which the company is established is as under:

- (a)
- (b)
- (c)
- (d)and so on.....

4. Governing Body:

The names, addresses, occupation and designation of the present members of the governing body to whom the management of the company is entrusted as required under the Companies Act, 2013 are as follows:

S.No.	Name	Addresses	Occupation	Designation in the Company
	(full in capital)			

- (1)
 - (2)
 - (3)
 - (4)
 - (5) and so on
-

5. Desirous person

We the undersigned are desirous of forming a company namely "....." under the Companies Act, 2013 in pursuance of this Memorandum of Association of the Company.

S. No.	Names and Addresses	Age	Occupations	Signatures of the Subscribers No. of Shares
--------	---------------------	-----	-------------	---

- (1)
- (2)
- (3)
- (4)

(5) and so on

Dated-----This Day of ----- at-----

Articles of Association

Articles OF ASSOCIATION OF.....PRIVATE LIMITED (Company Limited by Shares) (Incorporated under the Companies Act, 2013)

1. The Regulation contained in the table 'F' in the First Schedule to the Companies Act, 2013 shall apply to this company so far only as they are not inconsistent with any of the provisions contained in these regulations are made in these Regulations.
2. In these Regulations :
 - The "Act" means the Companies Act, 2013, or any statutory modification or Re-enactment thereof for the time being in force. "The Company" means "----- - PRIVATE LIMITED"
 - "Directors" means the Directors for the time being of the company or as the case may be, the Directors assembled at a Board.
 - "The Seal" means the Common Seal of the Company.
3. The Company is a Private Company within the meaning of Section 2(68)) of the Act and accordingly:
 - a) The right to transfer the shares of this company shall be restricted in the manner and to the extent as appearing in these Regulations.
 - b) The number of members of the Company shall be limited to 200 not including:
 - i. Persons who are in the employment of the Company, and
 - ii. Persons who having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be members after the employment ceased.
 - c) No invitation shall be issued to the public to subscribe for any shares in or debentures of this company.
4. The Business of the Company may be commenced as soon as the Directors think fit.
5. (a) The Authorized Share Capital of the Company is ₹divided into..... Equity Shares of ₹each with power to increase, sub-divide, consolidate or reduce the Capital subject to the provisions of the Companies Act, 2013.
 - (b) The Company shall have power to issue preference share including redeemable preference shares.
 - (c) The Company shall have powers to issue shares as per the provisions of Section 53 of the Act or any statutory modification thereof.

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- (d) Subject to the provisions of these Articles, the shares shall be under the control of the Board,
- 6. Subject to the restrictions hereinafter provided, shares in the Company shall be transferable by written instrument.
- 7. The transferor shall be deemed to remain the holder of shares until the name of the transferee is entered on the register of members in respect thereof.
- 8. a) The Board may refuse to register any transfer of shares
 - i. Where the share is not fully paid up:
 - ii. When the Company has a lien on the said share or shares:
 - iii. Without stating any reason there for where it is not proved to their satisfaction that the proposed transferee is a responsible person:
 - iv. Where the Board is of opinion that the proposed transferee is not a desirable person to admit to membership.
- b) If the Board of Directors refuse to register the transfer of shares the Board shall within 2 months of the date on which the application of transfer was lodged with the Company, give notice of refusal to the transferor and transferee.
- 9. The Board of Directors may decline to register any transfer of shares until the instrument of transfer is accompanied by the share certificate.
- 10. No shares of the company shall except as hereinafter provided by transferred unless and until the rights of pre-emption hereinafter conferred shall have been exercised.
- 11. At the expiration of the said twenty one days subject to the provisions of Section 56 of the Companies Act, 2013 the Company shall allocate the said shares amongst the member or members who shall have expressed his/her or their willingness to purchase.
- 12. In the event of the whole or part of the shares not being sold under Articles 11 hereof, vendor may at any time within six calendar months after the expiry of the said twenty one days transfer the shares not so sold to any person at any price.
- 13. a) On the death of a member in the case of joint holding the survivor or survivors shall be the only persons recognized by the Company as having any title to his/her interest in the shares.
- b) The executor or Administrators or holders of a Succession Certificate or the legal representative of a deceased member (not being one or more joint holders) shall be the only persons recognized by the Company as having any title to the shares registered in the name of such members.
- 14. The quorum for a General Meeting of the Company shall be two members present in person.
- 15. An Annual General Meeting of the Company may be convened by giving not less than 21 days notice in writing. All other General Meeting may be convened by giving not less than

7 days notice in writing.

16. The provision of Sections 98 to 109 of the Companies Act, 2013, shall not apply to this Company. The proxy shall be a member of this Company.
17. Until and otherwise determined at a general meeting the number of Directors shall be not less than two and not more than twelve including all kinds of Directors.
18. A Director of the Company shall not be required to hold any qualification share.
19. The Chairman for each meeting shall be appointed amongst the Directors to conduct the proceedings of the meeting.
20. The Board of Directors shall have power to appoint additional Directors, as per the provisions of Section 161 of the Act or by any statutory modifications thereof.
21. No Director shall be disqualified from his office by contracting with the Company nor shall such contract entered into by or on behalf of the company in which any Director is in any way interested, nor shall any Director so contracting or being so interested be liable to account to the company any profit realized by any such contract by reason only of such Directors holding such office or of that fiduciary relationship.
22. All acts done by the Directors or by a Committee of Directors or by any person acting as Director shall notwithstanding that if be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed.
23. The power and responsibilities of the Board of Directors of the Company shall be as laid down in the Companies Act, 2013 thereof.
24. Subject to the provisions contained in Section 174 of the Act, the quorum for a meeting shall be one third of its total strength (any fraction contained in that one third being rounded off as one) or two directors whichever is higher.
25. The Board of Directors may, from time to time secure the payment of such money in such manner and upon such terms and conditions in all respects as they think fit.
- 26.. The Company in general meeting may declare Dividends but no Dividends shall exceed the amount recommended by the Board.
27. The Board from time to time pays to members such interim dividends as appeared to it be justified by the profits of the Company.
28. The Company in general meeting may, upon the recommendations of the Board, resolve to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution and to apply the same for paying up any amounts for the time being.
29. The Board may deduct from any dividend payable to any member of all sums of money, if any, payable by him to the company on account of calls or otherwise in relation to shares

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of the company.

30. The Seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board or a Committee of the Board authorized in that behalf.
31. Every Director, Manager and other officers and Auditors of the company or their respective heirs, administrators or Executors shall be indemnified by the company against all actions, costs, losses, expenses which they or any of them or any of their heirs, Administrators or executors may incur or become liable to by reason of any contract entered into or at or thing done by him.

We, the several persons whose names, addresses and descriptions are subscribed hereunder are desirous of being formed into a company, in pursuance of this Articles of Association.

SL.No.	Names, Address and Occupations of	No. of shares Taken by each Subscriber	Signature of the Subscriber	Names, Description and Occupations of Witnesses	Address and of

DatedThis Day ofat.....

19.8 Annual Report of a Company

Section 136 of the Companies Act, 2013 requires that a copy of every financial statement (including the consolidated financial statement , auditor's report along with the annexure, or attachment thereto) which is to be laid before the annual general meeting of the company shall be sent, not less than 21 days before the meeting, to every member of the company, every trustee for the debenture holders and all other persons who are so entitled".

Content of Annual Report

- Company information
- Organization structure
- Leadership team
- Technology
- International operations
- Corporate social responsibility
- Directors' report
- Independent and consolidated financials statement
- Graphs – Independent financials

- Managements discussion and analysis
- Auditors Reports
- Cash Flow Statements
- Schedules & Notes forming part of accounts
- Auditors reports on Consolidated Financial Statement & Consolidated Balance Sheet
- Consolidated Profit and Loss Account & Cash Flow Statement
- Schedules & Notes forming part of Consolidated Accounts

FEEDBACK FORM

(1)	Name of the Student					
(2)	Registration No.					
	Contact detail with e-mail id, mobile number, etc.					
(3)	Subject & Paper No.	Paper: 2 : Business Laws, Ethics and Communication				
(4)	Name of Publication	Study Material				
(5)	Edition					
(6)	Do you find the publication student-friendly?					
(7)	Do the illustrations in the Study Material assist in understanding of the provisions contained in the Study Material?					
(8)	Does the Practice Manual contain adequate and sufficient questions to help in better understanding of the concepts explained in the Study Material?					
(9)	Are there any errors which you have noticed in the publication? If yes, give the specific details :					
	Type of Error (Specify nature of error)	Chapter No. (Unit No., if applicable)	Page No.	Para No. & line of the para	Text or problem (containing the error) as per the publication	Suggested Correction
	Typographical/ Printing/ Computational/ Conceptual/ Updation					
(10)	Do you feel that the publication can be made more value additive? If so, please give your specific suggestions. _____ _____					

Note: Use separate sheet, if necessary. You are also encouraged to send your response by e-mail at feedbackbos@icai.org

Please send feedback form to :

Director, Board of Studies

The Institute of Chartered Accountants of India

A-29, Sector-62, Noida- 201 309.